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I hereby certify that this correspondence for Application Serial No. 10/672,741 is being facsimiled to the U.S. Patent and Trademark Office via fax number (571) 273-8300 on the date shown below:

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REQUEST FOR RECONSIDERATION
Application 10/672,741

This request follows a telephone conversation with the examiner for getting this application in condition for allowance and addresses form PTO-303 sent 02/14/06. The applicant is not relying upon the requirement of prior art that an additional step of lifting the closure must be taken to open the package in Hakim '302 as stated by the examiner. **At issue is the need to orient or register the closure and manually lifting it past the container lugs.** The Hakim '302 patent specifies a sequence of four (4) steps that must be taken to open the package as stated in column 2 lines 53-60. Of specific note is the requirement for "withdraw the tool and closure manually and bring the respective corresponding lugs and slots into registry and (4) manually lift the tool and closure upwardly." (past the lugs). The claims in Hakim '302 are such they disclose a construction that do require the four steps in the specification. Hakim describes his '302 invention as having dual locking means. By combining the two locks with the four steps described as being necessary to open the two locks one gains an understanding of the Hakim '302, its limitations as stated in the claims, and an explanation as to function in the specification. To summarize, one must rotate, manually lift, register, and manually lift the closure with respect to the container to overcome the two locks and open the package. Both acts of lifting are necessary steps for opening the Hakim '302 package. One is directed to lift the closure after unscrewing it from the vial to allow (visual) registry of the openings on the closure with lugs on the vial, then the closure must be manually lifted past the lugs to open the package. Failure to do so, such as releasing the grip on the closure, will result in the registry of the closure with the vial being lost. It is only necessary to rotate the closure with respect to the container to open the package in application 10/672,741. Independent claim one (1) describes the structure as a container having retention means at [or near] the open end and elevating means near the open end; a closure having elevating means on the closure sidewall that cooperates with the container elevating means; and a closure top panel that has little to no protrusion above the container end. The specification directs one to rotate the closure with respect to the container (using frictional contact between the closure top panel and the palm of one's hand) to elevate the closure upwardly (past the retention means) to open the

package. One might argue that one must manually lift the closure to gain access to the contents of the package. While one must manually lift the closure to access the contents, the act of lifting the closure is not a requirement for opening the package. Any consumer can open any package having a screw cap by rotation but it is taken for granted that one must manually lift the closure from the container to gain access to the contents. It is therefore argued that the package in application 10/672,741 is opened solely by mechanical action of the elevating means disclosed in the claims and as described in the specification. .

The claims as written include the statement "said closure being removable from said container by rotating said closure with respect to said container" in claim one. This statement is being deleted from claim one because it is more appropriate for it to appear in the specification.

Addressing "To the degree set forth in the claims, the thread (36) is located "near" the mouth of the container." While the term "near" has some degree of ambiguity in its interpretation, Hakim overcomes any speculation as to the location of the thread (36) by referring to column 2 lines 5-8 and referring to FIG. 4. Clearly the thread is spaced a selected distance from the lower lug sides with said selected distance being greater than the total closure height (depth) as described in Hakim '302 claim 1 (e) and (h). This claim specifies the exact location of the thread. The applicant chooses to delete the words "or near" in claim one in reference to the location of the retaining means so as to differentiate from Hakim '302. This limitation, that retention means be located at said other end, should overcome the objection expressed by the examiner and is present in amended claim one.

The applicant is canceling claims 10-19 as appears in the attached claims.

Hopefully this response addresses all issues set forth in PTO-303 items 11 and 13 in the manner discussed in the subsequent phone conversation. Please call me at 419 662 8301 to discuss any item contained herein that differs from or in addition to our conversation.

Thank you for your continued help with this application.


Maximilian Kusz